

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re U.S. Patent No.: 7,427,403)
Inventors: BROWNING et al.)
Issue Date.: September 23, 2008)
For: METHODS FOR INHIBITING)
LYMPHOTOXIN-BETA RECEPTOR)
SIGNALLING)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPLICATION FOR PATENT TERM ADJUSTMENT-POST GRANT

In accordance with 37 C.F.R. § 1.705(b), Patentee hereby applies for patent term adjustment under 35 U.S.C. § 154(b) of 1221 days. This application is being filed within 180 days of issuance of the above patent, along with a petition under 37 C.F.R. § 1.183 for waiver of the two month term for requesting reconsideration of patent term adjustment as required by 37 C.F.R. § 1.705(d).

Patentee notes that the patent term adjustment calculated by the PTO in the Decision on Request for Review of Patent Term Adjustment mailed August 14, 2008, contains errors in the amount of time attributed to Applicant delay. Patentee further notes that the Application for Patent Term Adjustment filed on November 21, 2008 contains further errors in the application of 37 C.F.R. § 1.702(b)(4) to reduce the amount of 3 year pendency delay.

In view of these errors and decision of the Federal District Court for the District of Columbia in *Wyeth v. Dudas*, 580 F. Supp. 2d 138 (D.D.C. 2008) on September 30, 2008, and in the interest of accuracy and justice, Patentee submits that it is entitled to a total patent term adjustment of 1221 days.

Patentee has calculated a patent term adjustment of 1221 days based on the following facts:

PTO DELAY

The patent application was filed on February 15, 2002. The first Office Action on the merits was mailed on June 23, 2005, creating a first PTO examination delay of 800 days. The three year pendency date for determination of patent term adjustment was February 15, 2005. The patent was allowed on December 6, 2007. The issue fee was paid on March 4, 2008, and the patent was issued on September 23, 2008, creating an second USPTO examination delay of 81 days and a 3 year pendency delay of 1316 days.

Patentee erred in applying the 37 C.F.R. § 1.702(b)(4) exclusionary period for appellate review to the 3 year pendency delay calculation. The jurisdiction over this application never passed to the Board of Patent Appeals and Interferences and this rule should not have been applied. Therefore the 1242 days of 3 year pendency calculated by Patentee in the Applicant for Patent Term Adjustment filed on November 21, 2008, is incorrect. The correct number of days of 3 year pendency delay is 1316 days.

Under *Wyeth v. Dudas*, the total PTO delay is calculated as the sum of the PTO examination delay and the 3 year pendency delay, minus any days of those two delays that actually overlap. The number of days that overlap between these two delays is 209

days. Accordingly, the total PTO delay is (881 days of examination delay + 1316 days of 3 year pendency delay) - 209 overlap days, which is 1988 days.

APPLICANT DELAY

The PTO erred in the calculation of number of Applicant delay days due to abandonment of the application. Because the abandonment was unintentional, the appropriate rule to apply is 37 C.F.R. § 1.704(c)(3), not 37 C.F.R. § 1.704(c)(4), which applies to a failure to file a petition for withdrawal of a wrongful abandonment by the PTO.

The application was abandoned on February 11, 2003, by failure to reply to the Notice to File Corrected Application Papers of December 9, 2002. Applicants filed a petition for revival of the application stating that the delay causing the abandonment was unintentional on May 27, 2004. This petition was granted on July 22, 2004. Under 37 C.F.R. § 1.704(c)(3)(i), this abandonment created an Applicant delay equal to the number of days beginning of the date of abandonment and ending on the date of mailing of the decision reviving the application. This resulted in an Applicant delay of 527 days.

Applicants also accrued 240 days of Applicant delay for delays in replying to Office Actions. The total Applicant delay during prosecution of this application was 767 days.

TOTAL PATENT TERM ADJUSTMENT

Thus, the total adjustment based on PTO delay is 1988 days and the reduction in term adjustment is 767 days, resulting in a patent term adjustment of 1221 days total. Patentee respectfully requests that the current patent term adjustment be reconsidered.

As required by 37 C.F.R. § 1.705(b)(1), this application is accompanied by the required fee of \$200.00. Please charge any deficiencies to Deposit Account 06-0916. If there are any other fees due in connection with the filing of this request, please charge them to Deposit Account 06-0916.

Respectfully submitted,

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Dated: March 17, 2009

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